

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WAYNE JOHNSON,
Plaintiff,

v.

CONTRA COSTA COUNTY CLERK
RECORDER, et al.,
Defendants.

Case No. 21-cv-07579-JSC

**SCREENING ORDER PURSUANT TO
28 U.S.C. § 1915**

Re: Dkt. No. 9

The Court previously granted Plaintiff's motion to proceed *in forma pauperis* and gave him the opportunity to amend his complaint to cure the deficiencies identified in the 28 U.S.C. § 1915 screening. (Dkt. Nos. 4, 7.)¹ The Court now reviews Plaintiff's amended complaint pursuant to 28 U.S.C. § 1915. (Dkt. No. 9.)

COMPLAINT ALLEGATIONS

Plaintiff brings various constitutional claims, including violations of the Fourth, Eighth, and Fourteenth Amendments, relating to a void restraining order and his criminal conviction for violating that order. He also cites 42 U.S.C. §§ 1983 and 1988, as well as the California constitution and common law. (*Id.* ¶¶ 5, 7–8.)

A five-year restraining order was issued against Plaintiff on October 2, 2018. Plaintiff had no notice of the proceedings and no temporary restraining order had been issued. Thereafter, a Contra Costa County judge issued an arrest warrant based on false claims that Plaintiff had violated the restraining order. U.S. Marshals arrested Plaintiff on January 3, 2019 and he was released on bail on January 5, 2019. On March 4, 2019, Plaintiff appeared in court where the

¹ Record citations are to material in the Electronic Case File ("ECF"); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

1 judge “revoked Plaintiff’s bail and remanded him to custody.” (*Id.* ¶ 37.)

2 Plaintiff’s criminal trial took place between September 4 and December 20, 2019. (*Id.* ¶
3 73.) Plaintiff was “held without bond for the entire trial and prevented from locating crucial
4 witnesses and evidence.” (*Id.* ¶ 38.) During the trial, the presiding judge “ordered the court
5 reporter to not make a record of [Plaintiff’s] objection” and “continually obstructed justice and
6 manufactured roadblocks to Plaintiff’s fair trial.” (*Id.* ¶ 40.) He was convicted and incarcerated at
7 San Quentin State Penitentiary. (*See id.* ¶ 42.)

8 After his conviction, the California Court of Appeal voided the restraining order against
9 Plaintiff on January 3, 2020. Plaintiff was released from prison on April 1, 2021. (*See id.* ¶ 88.)
10 The Probation Officer “fabricated a story” about Plaintiff “living homeless in Contra Costa
11 County.” (*Id.* ¶ 23.) The Probation Officer knew that Plaintiff was a lifelong resident and
12 business owner in Alameda County. The falsehood was designed to harm Plaintiff by placing him
13 away from family and healthcare providers who treated his advanced coronary disease. As a
14 result, Plaintiff was released to Red Bluff, California for two weeks where he was homeless and
15 without food or means of support.

16 Plaintiff’s requested relief includes compensatory and general damages in the amount of
17 \$1,007,100; changes to Contra Costa County’s policies; punitive damages against all Defendants
18 in the amount of \$500,000; attorney’s fees; and trial by jury. (*Id.* at 17.) Plaintiff’s “underlying
19 conviction in cases 01-188003 and 0051905-90 are currently on Appeal in People v. Johnson
20 A159389, and there is an accompanying Petition for Writ Of Habeas Corpus also pending
21 associated with that appeal.” (*Id.* ¶ 14.)

22 LEGAL STANDARD

23 The Court has a continuing duty to dismiss any case in which a party is proceeding *in*
24 *forma pauperis* upon a determination that the case is: (1) frivolous or malicious, (2) fails to state a
25 claim on which relief may be granted, or (3) seeks monetary relief against a defendant who is
26 immune from such relief. *See* 28 U.S.C. § 1915(e)(2). The standard of review under 28 U.S.C.
27 §1915(e)(2) mirrors that of Federal Rule of Civil Procedure 12(b)(6). *Lopez v. Smith*, 203 F.3d
28 1122, 1126–27 (9th Cir. 2000). Thus, the complaint must allege “enough facts to state a claim to

1 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A facial
 2 plausibility standard is not a “probability requirement” but mandates “more than a sheer
 3 possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
 4 (cleaned up). To avoid dismissal, a complaint must contain more than “naked assertion[s],”
 5 “labels and conclusions,” or “a formulaic recitation of the elements of a cause of action.”
 6 *Twombly*, 550 U.S. at 555–57. “A claim has facial plausibility when the plaintiff pleads factual
 7 content that allows the court to draw the reasonable inference that the defendant is liable for the
 8 misconduct alleged.” *Iqbal*, 556 U.S. at 678.

9 A complaint must contain “a short and plain statement of the claim showing that the
 10 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *see also Moss v. Infinity Ins. Co.*, No. 15-cv-
 11 03456-JSC, 2015 WL 5360294, at *2 (N.D. Cal. Sept. 14, 2015). “While the federal rules require
 12 brevity in pleading, a complaint nevertheless must be sufficient to give the defendants ‘fair notice’
 13 of the claim and the ‘grounds upon which it rests.’” *Coleman v. Beard*, No. 14-CV-05508-YGR
 14 (PR), 2015 WL 395662, at *4 (N.D. Cal. Jan. 29, 2015) (quoting *Erickson v. Pardus*, 551 U.S. 89,
 15 93 (2007)). A complaint that fails to state a defendant’s specific acts “that violated the plaintiff’s
 16 rights fails to meet the notice requirements of Rule 8(a).” *Medina Chiprez v. Becerra*, No. 20-CV-
 17 00307-YGR (PR), 2020 WL 4284825, at *3 (N.D. Cal. July 27, 2020) (citing *Hutchinson v.*
 18 *United States*, 677 F.2d 1322, 1328 n.5 (9th Cir. 1982)).

19 Further, when a plaintiff files a complaint without representation by a lawyer, the Court
 20 must “construe the pleadings liberally . . . to afford the petitioner the benefit of any doubt.” *Hebbe*
 21 *v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (cleaned up). “A district court should not dismiss a
 22 pro se complaint without leave to amend unless it is absolutely clear that the deficiencies of the
 23 complaint could not be cured by amendment.” *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir.
 24 2015) (cleaned up).

25 DISCUSSION

26 Plaintiff pleads three claims arising from: (1) the Court Clerk’s entry of the unlawful
 27 restraining order, (2) the Court Reporter’s failure to record Plaintiff’s objections during trial, and
 28 (3) the Probation Officer’s intentional inclusion of false information in Plaintiff’s probation report.

1 “Section 1983 provides a cause of action for ‘the deprivation of any rights, privileges or
2 immunities secured by the Constitution and laws’ of the United States.” *Wilder v. Va. Hosp.*
3 *Ass’n*, 496 U.S. 498 (1990) (quoting 42 U.S.C. § 1983). “Section 1983 is not itself a source of
4 substantive rights, but merely provides a method for vindicating federal rights elsewhere
5 conferred.” *Graham v. Connor*, 490 U.S. 386, 393–94 (1989) (cleaned up). To state a claim
6 under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by
7 the Constitution or laws of the United States was violated, and (2) that the alleged violation was
8 committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

9 **A. First Cause of Action: Court Clerk**

10 According to the amended complaint, a judge issued a five-year restraining order against
11 Plaintiff on October 2, 2018; Plaintiff challenges the Court Clerk’s entry of that order. Plaintiff
12 alleges that “any sworn clerk knows that a restraining order cannot be issued without serving a
13 [temporary restraining order].” (Dkt. No. 9 ¶ 64.) He emphasizes that, on appeal, the restraining
14 order was determined not merely voidable but “void from its inception,” such that the Clerk
15 should not have issued it in the first place. (*Id.*)

16 The amended complaint does not allege facts that plausibly support an inference that the
17 Clerk performed her duty improperly. Rather, it alleges that the Clerk entered the order as
18 directed by the judge. As such, Plaintiff’s claim is barred by absolute quasi-judicial immunity.
19 The immunity “applies when a non-judicial officer performs a non-discretionary or administrative
20 function . . . at the explicit direction of a judicial officer.” *Wright v. Beck*, 981 F.3d 719, 738 (9th
21 Cir. 2020) (cleaned up). Entry of a restraining order issued by a judge is a “purely administrative
22 act,” which “when viewed in context [is] actually a part of the judicial function” of resolving
23 disputes and entering orders. *In re Castillo*, 297 F.3d 940, 952 (9th Cir. 2002) (bankruptcy trustee
24 immune from suit related to scheduling and notice of hearing); *see also Moore v. Brewster*, 96
25 F.3d 1240, 1244 (9th Cir. 1996) (clerk immune from suit related to processing of supersedeas
26 bond). Plaintiff’s arguments about ministerial acts, (Dkt. No. 9 ¶¶ 46–48; Dkt. No. 10), do not
27 overcome the absolute quasi-judicial immunity afforded to acts that are closely associated with the
28 judicial function. *See Mishler v. Clift*, 191 F.3d 998, 1008 (9th Cir. 1999) (explaining that

plaintiff could challenge a ministerial act “not closely associated with the judicial process,” but noting that “holding hearings, taking evidence, and adjudicating are functions that are inherently judicial in nature”). Such immunity “discourages collateral attacks on final judgments through civil suits, and thus promotes,” as in Plaintiff’s case, “the use of appellate procedures as the standard system for correcting judicial error.” *Castillo*, 297 F.3d at 947.

Accordingly, Plaintiff’s claim against the Clerk is barred. *See* 28 U.S.C. § 1915(e)(2) (mandating dismissal of any claim that “seeks monetary relief against a defendant who is immune from such relief”).

B. Second Cause of Action: Court Reporter

The amended complaint alleges that, during trial, the judge “ordered the court reporter not to make a record” of Plaintiff’s objections to prevent Plaintiff from preserving them for appeal. (Dkt. No. 9 ¶ 40.) Recording objections “is a ministerial act for the Court Reporter,” with no “discretion to not take down any critical objections.” (*Id.* ¶ 41.)

For the same reasons as the first claim, this claim is barred by absolute quasi-judicial immunity. Recording court proceedings at the direction of a judge is an administrative act that is part of the judicial function of holding hearings and resolving disputes. *See Wright*, 981 F.3d at 738; *Castillo*, 297 F.3d at 947. Accordingly, Plaintiff’s claim against the Court Reporter is barred. *See* 28 U.S.C. § 1915(e)(2).

C. Third Cause of Action: Probation Officer

The amended complaint alleges that the Probation Officer deliberately put false information in Plaintiff’s probation report “in an effort to have [him] sent to a community in which he . . . has no connection[s] and that places his . . . life at risk.” (Dkt. No. 9 ¶ 59.) “[A]n inmate who is released on parole” “may be returned” to a county or city other than that of his last legal residence “if that would be in the best interests of the public.” Cal. Penal Code § 3003(a)-(b). The amended complaint does not allege facts sufficient to support an inference that Plaintiff’s placement in Red Bluff was contrary to the public interest or violative of a constitutional right. Plaintiff states that Red Bluff “is populated with White Supremacists who move there to escape Black people,” and that the Probation Officer’s goal was to “have him die or be killed.” (Dkt. No.

9 ¶ 88.) These conclusory statements hint at violations of constitutional rights, but are not
 2 sufficiently supported by the factual allegations in the amended complaint.

3 Additionally, probation officers have absolute immunity with respect to “the imposition of
 4 parole conditions.” *Thornton v. Brown*, 757 F.3d 834, 840 (9th Cir. 2013) (cleaned up). As noted
 5 in the Court’s first screening order, (Dkt. No. 7 at 6), the facts as pleaded do not compel a finding
 6 of immunity because it is not clear as a matter of law that the Probation Officer’s alleged conduct
 7 is an “imposition of parole conditions.”

8 CONCLUSION

9 For the reasons explained above, the amended complaint does not survive Section 1915
 10 review. Plaintiff’s claims against the Court Clerk and Court Reporter are barred by absolute
 11 quasi-judicial immunity. Plaintiff’s claim against the Probation Officer requires additional factual
 12 allegations.

13 If Plaintiff believes he can cure the deficiencies, or at least some of the deficiencies, he
 14 may file a second amended complaint. In light of Plaintiff’s notice of unavailability, (Dkt. No.
 15 11), the second amended complaint is due on or before **March 28, 2022**. Plaintiff is warned that
 16 failure to file a second amended complaint may result in a report and recommendation that his
 17 complaint be dismissed.

18 The Court encourages Plaintiff to seek free assistance from the Northern District’s Legal
 19 Help Center, 450 Golden Gate Avenue, 15th Floor, Room 2796, San Francisco, CA 94102. In
 20 light of the ongoing COVID-19 pandemic, Plaintiff should make a telephone appointment by
 21 calling (415) 782-8982. The website for the Northern District of California also has information
 22 for litigants who are not represented by counsel.

23 **IT IS SO ORDERED.**

24 Dated: February 9, 2022

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JACQUELINE SCOTT CORLEY
 United States Magistrate Judge
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